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5 CHRISTOPHER A. HICKSON,
6 Petitioner,
7 v.
8 RON BROOMFIELD,
9 Respondent.

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11 Case No. [23-cv-03233-RMI](#)
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**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Re: Dkt. No. 4

Petitioner, a California prisoner, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also filed a motion to proceed in forma pauperis. (dkt. 4)

BACKGROUND

Petitioner challenges a prison disciplinary finding at San Quentin State Prison. (dkt. 1 at 7). The Marin County Superior Court denied a habeas petition seeking relief. (dkt. 1 at 7-8).

DISCUSSION

Standard of Review

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must “specify all the grounds for relief available to the petitioner . . . [and] state the facts supporting each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)).

1 **Legal Claims**

2 As grounds for federal habeas relief, Petitioner alleges that there was insufficient evidence
3 to find him guilty relating to a prison disciplinary finding. However, Petitioner provides no
4 information regarding the punishment he received and if he lost time credits with respect to his
5 sentence.

6 “Federal law opens two main avenues to relief on complaints related to imprisonment: a
7 petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871,
8 Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to the lawfulness of confinement or
9 to particulars affecting its duration are the province of habeas corpus.”” *Hill v. McDonough*, 547
10 U.S. 573, 579 (2006) (quoting *Muhammad v. Close*, 540 U.S. 749, 750 (2004)). “An inmate’s
11 challenge to the circumstances of his confinement, however, may be brought under § 1983.” *Id.*

12 Habeas is the “exclusive remedy” for the prisoner who seeks “immediate or speedier
13 release” from confinement. *Skinner v. Switzer*, 562 U.S. 521, 533-34 (2011) (quoting *Wilkinson v.*
14 *Dotson*, 544 U.S. 74, 82 (2005)); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). “Where the
15 prisoner’s claim would not ‘necessarily spell speedier release,’ however, suit may be brought
16 under § 1983.” *Skinner*, 562 U.S. at 533-34 (quoting *Wilkinson*, 544 U.S. at 82). In fact, a § 1983
17 action is the exclusive remedy for claims by state prisoners that do not “lie at the ‘core of habeas
18 corpus.’” *Nettles v. Grounds*, 830 F.3d 922, 931 (9th Cir. 2016) (*en banc*) (quoting *Preiser*, 411
19 U.S. at 487). A claim that meets the statutory criteria of § 1983 may be asserted unless it is within
20 the core of habeas corpus because “its success would release the claimant from confinement or
21 shorten its duration.” *Thornton v. Brown*, 757 F.3d 834, 841 (9th Cir. 2014) (citing *Preiser*, 411
22 U.S. at 500).

23 Habeas is not the proper remedy to challenge a disciplinary finding where reversal of the
24 finding would not necessarily lead to a grant of parole or speedier release. *See Nettles*, 830
25 F.3d at 934-35. But a challenge to a disciplinary finding that resulted in assessment of time credits
26 must be brought in habeas if reinstatement of the time credits would “necessarily spell speedier
27 release.” *See Skinner*, 561 U.S. at 525.

28 The petition is dismissed with leave to amend to provide more information. Petitioner must

1 indicate the punishment from the disciplinary finding such as to clarify whether or not he has lost
2 time credits or other privileges. If reversal of the disciplinary finding will not lead to a speedier
3 release, then Petitioner must bring this claim in a civil rights action. If, on the other hand,
4 Petitioner has lost time credits, then he may bring this action in a habeas case.

5 Petitioner is also informed that prisoners in state custody who wish to collaterally
6 challenge either the fact or length of their confinement in federal habeas proceedings are first
7 required to exhaust state judicial remedies, either on direct appeal or through collateral
8 proceedings, by presenting the highest state court available with a fair opportunity to rule on the
9 merits of each and every claim they seek to raise in federal court. *See 28 U.S.C. § 2254(b), (c);*
10 *Rose v. Lundy*, 455 U.S. 509, 515-16 (1982). Petitioner indicates that the superior court ruled on
11 his habeas petition, but it does not appear that he presented his claim to the California Supreme
12 Court. In an amended petition, he must address this issue.

CONCLUSION

14 1. The motion to proceed in forma pauperis (dkt. 4) is **GRANTED**. The petition is
15 **DISMISSED** with leave to amend in accordance with the standards set forth above. The amended
16 petition must be filed within **twenty-eight (28) days** of the date this order is served and must
17 include the caption and civil case number used in this order and the words **AMENDED**
18 **PETITION** on the first page. Failure to amend within the designated time may result in the
19 dismissal of the petition.

20 2. Petitioner must keep the court informed of any change of address and must comply
21 with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this
22 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v.*
23 *Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

IT IS SO ORDERED.

25 Dated: August 14, 2023

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ROBERT M. ILLMAN
United States Magistrate Judge